IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

LETTERS PATENT APPEAL NO 408 OF 1999

IN

SPECIAL CIVIL APPLICATION NO 6764 OF 1998

For Approval and Signature :

Hon'ble MR. JUSTICE B.J.SHETHNA
and
Hon'ble MR. JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ALEKHAN HAMJEKHAN PATHEN
VERSUS
GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:
MR MUKESH RATHOD for Appellant

MR NAVIN K PAHWA for Respondent No.1

CORAM : MR JUSTICE B.J.SHETHNA
and
MR JUSTICE A.L.DAVE
Date of Order : 08/04/2003

ORAL JUDGMENT

#. This Letters Patent Appeal is directed against the judgment and order dated 1.2.1999 passed by the learned Single Judge of this court in Special Civil Application No.6764 of 1998 whereby the learned Judge allowed the Special Civil Application No.6764 of 1998 filed by the respondent-Corporation.

#. The appellant-workman retired from service of the respondent-Corporation on 30.6.1987. Thereafter, after a period of 4 months i.e. on 7.11.1987 he approached the Labour Court, Ahmedabad under Section 33(c)(2) of the Industrial Dispute Act for determining the wages payable to him by the employer-Corporation for over time done by him between 1974 to 1986 for a period of 12 years.

#. The admitted case is that for the entire period except for the period between 1.8.1982 to 30.4.1984 the employee was paid each month overtime wages for 45 hours per month. However, during this period he was paid over time wages for less then 45 hours per month. The learned Judge found that for most of the period he had worked for 45 hours overtime each month. The employee had no record regarding the same. However, the Labour Court passed the award that the employee is entitled to overtime wages for actual period for which he had served in addition to regular work period and cannot confine to a fixed period. Accordingly, the Labour Court passed an order to compute overtime payable for additional 45 hours for each month from March, 1974 to December, 1986 and Rs.59,265/= and Rs.9,000/= towards short payment between 1.8.82 to 30.4.84. This order passed by the Labour Court in favour of the employee was challenged by the respondent-Corporation by way of Special Civil Application No.6764 of 1998 before this court.

#. The learned Single Judge of this court was of the opinion that "the order passed by the Labour Court suffers from apparent error inasmuch as notwithstanding finding that the workman says that he has on and average worked for more than 45 hours every month no finding at

all has been reached whether on the statement of the workman or on the record produced by the employer about the genuineness of which no doubt has been expressed that he has worked double the time for which he has been paid every month overtime wages throughout the entire period."

The learned Single Judge also observed that "the court also does not appear to have taken note of the fact that notwithstanding stating in cross examination that at the time of each payment of overtime wages every month he has raised protest orally but has chosen to make an application under Section 33C(2) only after four months of his superannuation".

The learned Single Judge also observed that "it has also failed to consider that it has been the case of the employer that a straight line method of making overtime payment on average functioning in the establishment is followed is corroborated by the admission of the employee that for entire period he has been paid overtime wages for 45 hours a month without demur."

#. In view of the above, learned Single Judge held that ignoring the aforesaid aspect and ignoring the ordinary course of human conduct the Tribunal jumped upon the conclusion that in addition to 45 hours working overtime each month for which employee is entitled to payment of 45 hours additional overtime wages basis. The learned Single Judge has also held that there was an inordinate delay on the part of the workman to approach the Labour Court which seriously effects the credibility of the statement of the workman which remain un-corroborated by any documentary evidence about his claim to having actually worked for overtime in excess of the period for which he has been paid every month. The learned Single Judge also found that there was no evidence to reach the finding that the workman had worked for 90 hours overtime a month nor there was any basis for estimating such overtime working by the claimant.

#. In view of the above, learned Single Judge was of the opinion that award of overtime at the rate of 45 hours excess working each month from March, 1974 to December, 1986 for a period of 12 years cannot be sustained, therefore, that part of the award passed by the Labour Court in favour of the appellant-workman was quashed. However, the learned Judge do not find any fault with the computation of short payment made on the basis of practice followed at the establishment for overtime between 1.8.1982 to 30.4.1984 quantifying the same at

Rs.9,000/= and accordingly that part of the order passed by the Labour Court was maintained. Thus, the petition was partly allowed.

#. Learned counsel Shri Rathod for the appellant vehemently submitted that the learned Single Judge was not justified in interfering with the order passed by the Labour Court. He submitted that delay should not have come in the way of the workman. Relying on the judgment of the learned Single Judge of this Court (Coram : H.L.Gokhale, J.) in case of Gujarat State Road Transport Corporation Vs. Keshavlal Maneklal Shah reported in 1998(2) GLH 996 he submitted that on the ground of delay learned Single Judge ought not to have interfered with the order passed by the Labour Court. It is true that the learned Single Judge of this court in case of Keshavlal Maneklal Shah (supra) has held that on the ground of delay claim of the workman should not have been rejected. But in our considered opinion when another learned Single Judge of this court took the view that claim of the workman should be rejected on the ground of delay then judicial propriety demands that another learned Single Judge of this court should have referred the matter to the Larger Bench. Instead of that Hon'ble Mr. Justice H.L.Gokhale, in case of Keshavlal Maneklal Shah (supra) preferred not to follow the judgment of another learned Single judge of this court (Coram : M.R.Calla, J.) (as he then was) reported in case of E.S.I. Scheme Vs. Natvarlal Amrutlal Shah reported in 1996(2) GLH 161.

#. We have already reproduced hereinabove some of the observations and findings recorded by the learned Single Judge of this court in his judgment and order dated 1.2.1999 delivered in Special Civil Application No.6764/99. It is clear from judgment of the learned Single Judge that in the instant case practically the workman had not produced any evidence whatsoever in support of his claim that he had done overtime during the period of last 12 years from 1974 to 1986. When there is no evidence, then we are of the considered opinion that the learned Single Judge was fully justified in setting aside the award passed by the Labour Court, which was based on no evidence. Powers under Articles 226 and 227 of the Constitution are to be exercised only in such cases where there is no evidence and in spite of that the Labour Court passed the award. Therefore, we are not inclined to interfere with the judgment of the learned Single Judge in this appeal.

It is also clear from the judgment of the learned Single Judge that he had not allowed the writ petition only on the ground of delay on the part of the workman in approaching the Labour Court for his claim. Delay of 12 years is one of the considerations which weighed with the learned Judge in interfering with the impugned award passed by the Labour Court in his jurisdiction under Article 226 and 227 of the Constitution of India. The conduct of the respondent-workman keeping silent for all these 12 years speaks volumes. One would not keep mum if he is not paid for the work which he has done by doing overtime. One can understand that a person, who has not paid his dues of overtime may not complain about the same for few days or few months, but not for so many years. Thus, when the workman had approached the Labour Court after lapse of a period of 12 years, then in our considered opinion the Labour Court ought not to have accepted his statement as Gospel truth in absence of any authentic evidence in support of his case that he had done overtime for 12 years, but not paid for the same for all those years.

#. In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

(A.L.Dave, J.)

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